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# IS THE DEMOCRATIC PARTY INSINCERE?

BY JOSEPH S. AUERBACH.

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JUSTLY or unjustly, there are laid at the door of the present Republican Administration serious charges of an arbitrary exercise of power, of the usurpation by the Executive of legislative functions, of unconstitutional acts, and of a general tendency not alone toward a centralization of power in the general Government at Washington, but toward a personalization of government in Mr. Roosevelt.

To all these charges a denial is interposed; and it is asserted with great frequency and emphasis by those high in the councils and confidence of the Republican Party, and by the President himself, that the Democratic Party in making these charges, and in its present appeal for popular support, is guilty of insincerity.

It remains with the great body of voters, who are not partisans from interest or habit, and whose support is essential to the success of either candidate, to pass upon these grave issues, submitted to them as to a great and impartial jury for their verdict.

As to the great, far-reaching significance of that verdict there should be no misapprehension.

If favorable to the Republican Party, it will be an approval, or at least a condonation, of acts which have been the subject of so much heated discussion for the past few months, and a deliberate acquiescence in the policy of that party, carried out through its accidental but accredited representative.

The acts of the agent, even if unauthorized and in excess of his delegated powers, will then have been ratified by the principal, and that principal will no longer be the Republican Party, but the American People.

The momentous question is whether we are prepared for that kind of an endorsement of the Republican Party.

It may be that we have come to a pass where such a distinct departure from precedents which have heretofore been our guide is defensible; but we need a good deal more to bring this home to us as a conviction than the specious insistence that a condemnation of the acts complained of will necessarily mean their undoing.

No such argument is entitled to serious consideration. On the contrary, under principles controlling with our courts and sanctioned by general usage, if rights have vested and rules of property, or even of conduct, have been established under acts indefensible in themselves but done with apparent authority, it may be that the acts in whole or in part must stand. The questions, however, whether such acts shall stand because these rights have vested and these rules have been established, or whether they shall stand as accepted precedents because the acts are right and defensible in themselves, give rise to wholly different answers. Even if every one of such acts must stand, the issue as to the character of these acts is not a dead, but a living, issue; for the issue then is not the thing done, but the principle pursuant to which it was done. Unless the Republican Party can so successfully defend its acts that the justification for its conduct is complete, without recourse to the argument as to the embarrassment which might follow a refusal to endorse these acts, then that party is not entitled to our support.

The just and the only legitimate method of applying the test of approval or disapproval to these acts is to consider what the people of the United States would do if Mr. Roosevelt were seeking election on a platform which set forth as part of its policy an intention to carry out, precisely as they were carried out, all those acts of which grave complaint is now made.

It is certain that Mr. Roosevelt cannot fairly object to this test, and it is equally certain that, in this way, we shall view these acts in a new and a rather startling light.

Let us, at the outset, fix upon the proper, justifiable methods for conducting such an inquiry.

We are not to be misled by the plausible claim that, at most, the departure from law and tradition is apparently insignificant. In the consideration of an unconstitutional or an indefensible act by an Executive or by a Legislature, the question is not what harm it may do, or how grave a departure from constitutional

principles or accepted tradition and precedent it may be, nor what are the motives which prompted the departure.

The question is whether there is any departure at all.

In our courts of law, invalid testamentary trusts, under statutes relating to the disposition of property, are not confined to those cases where it is apparent that the provisions must offend against the statute. The possibility of such a result is sufficient. So, also, our courts, finding a contracting party interested in the subject-matter of his trust, permit neither court nor jury to consider the transaction from the standpoint of its resulting injury or benefit. They condemn the transaction wherever the prohibited relation is disclosed.

Much more is great caution to be observed where the question under consideration is one involving the good faith of a nation, or the slightest assumption by an Executive of unconstitutional powers, or an inclination on his part to disregard constitutional limitations. The extent or degree of the offence is not of controlling moment. That it exists at all is sufficient to call for instant condemnation.

An occasion once arose where the President of the United States had undertaken merely to take from one of the Cabinet officers of the Government the right of determining where the public money should be deposited, and to exercise that function himself. Webster then uttered these words:

"It was strongly and forcibly urged, yesterday, by the honorable member from South Carolina, that the true and only mode of preserving any balance of power in mixed governments is to keep an exact balance. This is very true, and to this end encroachments must be resisted at the first step. The question is, therefore, whether, upon the true principles of the Constitution, this exercise of power by the President can be justified. Whether the consequences be prejudicial or not, if there be an illegal exercise of power it is to be resisted in the proper manner. Even if no harm or inconvenience results from transgressing the boundary, the intrusion is not to be suffered to pass unnoticed. Every encroachment, great or small, is important enough to awaken the attention of those who are entrusted with the preservation of a constitutional government. We are not to wait till great public mischiefs come, till the government is overthrown, or liberty itself put into extreme jeopardy. We should not be worthy sons of our fathers were we so to regard great questions affecting the general feeling. Those fathers accomplished the Revolution on a strict question of principle. The Parliament of Great Britain asserted a right to tax the Colonies in all cases whatsoever; and it was pre-

cisely on this question that they made the Revolution turn. The amount of taxation was trifling, but the claim itself was inconsistent with liberty; and that was, in their eyes, enough. It was against the recital of an Act of Parliament, rather than against any suffering under its enactments, that they took up arms. They went to war against a preamble. They fought seven years against a declaration. They poured out their treasures and their blood like water, in a contest against an assertion which those less sagacious and not so well schooled in the principles of civil liberty would have regarded as barren phraseology or mere parade of words. They saw in the claim of the British Parliament a seminal principle of mischief, the germ of unjust power; they detected it, dragged it forth from underneath its plausible disguises, struck at it; nor did it elude either their steady eye or their well-directed blow till they had extirpated it and destroyed it to the smallest fibre. On this question of principle, while actual suffering was yet afar off, they raised their flag against the Power to which, for purposes of foreign conquest and subrogation, Rome, in the height of her glory, is not to be compared; a Power which is dotted over the surface of the whole globe, with her possessions and military posts, whose morning drum-beat, following the sun, and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England.

"The necessity of holding strictly to the principles upon which free governments are constructed, and to those precise lines which fix the partitions of power between different branches, is as plain, if not as cogent, as that of resisting, as our fathers did, the strides of the parent country against the rights of the Colonies; because, whether the power which exceeds its just limits be foreign or domestic, whether it be the encroachment of all branches on the rights of the people, or that of one branch on the rights of others, in either case the balanced and well-adjusted machinery of free government is disturbed, and, if the derangement go on, the whole system must fall."

Nor, again, are we to be held to any strict requirement of proof as to the motives for such acts.

Motives are elusive, and, whether the acts were committed from good or from wrong motives is not a question of first importance.

The Presidency of the United States is a trusteeship held for its beneficiary—the people of the United States. The rules laid down for the guidance of the Trustee are found in the Constitution, in our statutes, in the decisions of our courts and in precedents established by a long course of national conduct. No one but the beneficiary has given, or could give, to the Trustee a license to depart from these rules. The President does not create these rules—he obeys them. It may have been the intention of the President—and we should be prepared to concede much to one

of his high character—to do justice always; but the people of this country cannot be expected to acquiesce in the attempt of the Executive to make laws, however just, rather than to execute laws as they exist, any more than they would be content that courts of law should discard all precedents, and attempt to render decisions according to some freshly devised theory of right and wrong, as each case arose for decision.

We are free, in matters such as are now under discussion, to rest our final judgment on a foundation much less substantial than that of established proof of facts. The present inquiry is not similar to a trial in a court of law. It may be likened rather to the proceedings of an investigating committee of a legislature, where impressions, at times even hearsay, and a general course of conduct are all properly to be taken into consideration and given due weight.

Only in this case all these conditions are much more applicable, for the question at issue is what hereafter shall be our standards for national conduct, and the investigating committee is the American People.

We are to determine whether the Republican Party is entitled to our endorsement in much the same way in which we come to a conclusion as to the character of an individual.

From a consideration of these acts, not as isolated or unrelated, but in association with other acts, and from the character of the defence interposed, we are to conclude whether the charges against the Administration of Mr. Roosevelt are just.

We must bear in mind that the acts complained of find their source and inspiration and their defence in the doctrine of centralization, which is the creed of the Republican Party, and that the personalization of government is the natural but the dangerous offspring of centralization. The imperceptible but resistless drift of legislation for which the Republican Party is responsible, and of much judicial interpretation of that legislation and of the Constitution itself, promoted and sanctioned by Republican doctrine, has to-day stripped the several States of much of their individuality, so that in some vital essentials they are no longer States, but mere Boroughs.

Chief-Justice Marshall, a man whose views were not always in accord with those of Jefferson, the founder and apostle of Democracy, said:

"No political dreamer was ever wild enough to think of breaking down the lines which separate the States and of compounding the people into one common mass."

If we are prepared to stand idly by and see, not dreamers but men, active, aggressive, in the control of a great party, and of the machinery of government, break down these lines, then we have enthroned new leaders and exalted wholly new standards.

Nor are we to be turned aside from an investigation of these questions by a recital of past shortcomings of the Democratic Party.

We are not dealing with offences of either party, other than those which are of vital import in this election. The Democratic Party has often come short of its high purposes; it has disappointed its followers and forfeited their support. But it has recanted its errors; it has returned to its old allegiance, and has consecrated itself anew to its old articles of faith. Whether it is sincere in this must be gathered largely from what it has to say as to the conduct of the Republican Party during the past few years, and from the kind of candidate it has offered for the suffrages of the American People.

And, finally and above all, in such an inquiry we are to resolve all doubts not in favor of the Republican Party or of Mr. Roosevelt, but of the Nation.

In the light of these suggestions, let us apply the test suggested and inquire briefly whether, if it were now proposed by the Republican Party to pursue the course it has adopted and to commit the acts now complained of, we should give or withhold our approval.

Let us suppose, therefore, that the announced intention of the Republican Party in its platform were, if successful in this canvass:

That the President of the United States would, after a refusal by Congress to pass a pension law, put into force Pension Order No. 78, which was a substitute for such legislation;

That the party should announce that over remote territorial possessions, which were acquired and which can be held only by a vast navy, our flag was to float for the protection of subjects against internal disorder, and not as a symbol of American citizenship;

That the building of the Panama Canal was to be compassed

by a resort to practices which, it would not be difficult to establish, would involve a breach of faith with another nation, coupled with an arbitrary unconstitutional act;

That the President would devise the new political expedient of a constructive recess of Congress to secure, out of all order of legitimate preferment, the appointment of a friend to a major-generalship of the United States Army;

That he would in a series of addresses throughout this country advocate an amendment to the Constitution of the United States that would, if adopted, operate to so obliterate State lines, that the "compounding of the people into one common mass" would be seriously threatened;

That we were to be treated to episodes of the "We want either Perdicaris alive or Raisuli dead" order; and that we were to have our navy move from point to point, not for display or discipline, but for threatened action;

That weak but independent nations were to be lectured and threatened, as by a pedagogue armed to the teeth, about their manners and their debts, in language like the following used by Mr. Roosevelt:

"Any country whose people conduct themselves well can count upon our hearty friendliness. If a nation shows that it knows how to act with decency in industrial and political matters, if it keeps order and pays its obligations, then it need fear no interference from the United States. Brutal wrong-doing or an impotence which results in the general loosening of the ties of civilized society may finally require intervention by some civilized nation, and in the Western Hemisphere the United States cannot ignore its duty;"

That we were thus to see the Monroe Doctrine evolved into a new doctrine that is entitled in all justice to be baptized the Roosevelt Doctrine;

And that, generally, a centralized, a personalized, and a kind of *vi et armis* theory of government was to be set up for our worship;

What, under such conditions, would the people do at this Election?

Unless this Administration can stand this test of its acts—disassociated wholly from any consideration of the inadvisability or impracticability of undoing what has been done—it must be condemned, and condemned utterly.

The limitations of a magazine article forbid anything like an



extended discussion of these questions. The answer to some is apparent without discussion. The answer to others is equally apparent if we trace these acts to their source and inspiration, in the chief article of faith of the Republican Party, the centralization of government; for, from the centralization of government, it is only one and a very short step to the personalization of government, and from the latter the step is imperceptible to a Government which shall act upon personal caprice and be on the borderland, and perhaps within the province, of indifference to all law and precedent.

Though the scheme was immature and died in birth, nothing could better illustrate the way in which the Constitution is regarded by Mr. Roosevelt than what he did, a year or two ago, in the matter of a proposed amendment to the Constitution, advocated by him, not once, but in a series of speeches throughout the country.

In order that there should be centred in Washington a control over large corporations, Mr. Roosevelt proposed and advocated, over and over again, an amendment to the Constitution on the ground that:

"Our Constitution was framed when the economic conditions were so different that each State could easily be left to handle the corporations as it saw fit."

With the evil which might result from any such interpretation of the Constitution the evil, however great it may be, of large corporations is not to be compared.

To the United States Constitution we look as the source of authority and power, and, not finding them there, they belong to the States, and not to Congress, nor to the President. Under any other interpretation the whole theory of the Constitution would be reversed, for the Constitution would thus be given the force and effect of a State Constitution, which is looked to for prohibitions upon legislative and executive action. From this the step is easy, not alone to the promulgation of immature schemes for reshaping and tinkering with the Constitution, but also to an interpretation which may be the basis for even lawlessness.

The end of Mr. Roosevelt's plan was to give a definite control, as he expressed it, to "Some Sovereign" over our large corporations, and therefore over the great bulk of our commercial transactions; the means by which he proposed to carry out his plan was

a scheme, substantially, to obliterate State lines. The erroneous theory upon which the amendment was sought to be justified was, that when the Constitution was framed, each State was in a position where it could easily be "left to handle" the corporations within its limits as it saw fit. But no one "left" anything to the States. On the contrary, the powers of the Federal Government represent simply the sum total of the concessions from the several States. The States retained what they did not part with. This is not a technical and over-refined distinction. It is fundamental, and on it rests one of the underlying principles of construction of the Constitution, and by the express language of the Constitution itself, among its first amendments, it was provided that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

There has been extended debate concerning the Pension Order of Mr. Roosevelt, but much of it is irrelevant. Comparatively, the question as to how much money the Pension Order takes from the Treasury of the United States is not of such great concern; the question of importance is how much has it taken away from the constitutional foundation on which this Government rests. A reference to any precedent set by Mr. Cleveland or by Mr. McKinley is of little moment, because the conditions were different. But assume that they were in part similar, they did not act immediately prior to a political convention at which either was a candidate, nor by a usurpation of the legislative function, when the whole subject was under consideration by Congress. There were at least four pension bills pending in Congress—three or more in the House of Representatives and one in the Senate—when this order was promulgated. All of these bills were of similar import and one of them was in effect the same as the Pension Order. The mere pendency of such bills was evidence that, in the opinion of Congress, legislation was essential to authorize the act which the order of Mr. Roosevelt sought to accomplish.

The proposed legislation failed of enactment. Then the President took the matter into his own hands, and authorized or approved the order which operated as having the effect of a law which Congress had declined to enact.

If a corporation, having sought and having failed to secure legislative authority for the carrying out of some corporate pur-

pose, thereupon lawlessly puts its scheme into effect, could it reasonably look for anything but condemnation of its course? Much less can the President expect to escape like condemnation, for he is violating the plain letter of the Constitution, no matter what his motive may have been. The question fairly to-day before the voters of the United States is: Suppose the candidate of the Republican Party should announce that, if elected to the Presidency, he would, in the event that certain pension bills in Congress failed of passage, authorize or sanction and then defend the issue of an order which was to have all the force and effect of a legislative act.

Would the people of the United States, in the face of such a declaration, elect Mr. Roosevelt? There is no middle ground. Mr. Roosevelt's defence cannot stop short of such an endorsement. If we should not be prepared to authorize in advance such a performance, Mr. Roosevelt does not deserve election, simply because the revocation of the order might now operate as an injury to many people entitled to the lasting gratitude and consideration of the nation.

How can the act be regarded as being other than what it was termed in the Senate of the United States, "a piece of Executive Legislation"?

It was stated, too, in the Senate, with much emphasis and with equal truth, that the order was taken bodily from the Bill, and was issued when it became evident that the Bill was not likely to become a law. And it was issued on the eve of a Presidential convention at which Mr. Roosevelt was a candidate for nomination.

The order reads:

"Ordered, (1) In the adjudication of pension claims under said act of June 27th, 1890, as amended, it shall be taken and considered as an evidential fact, if the contrary does not appear, and if all other legal requirements are properly met, that when a claimant has passed the age of 62 years he is disabled one-half in ability to perform manual labor, and is entitled to be rated at \$6 per month; after 65 years, at \$8 per month; after 68 years, at \$10 per month, and after 70 years, at \$12 per month."

One of the pending Bills reads as follows:

"That every officer or enlisted man in the Army or Navy of the United States coming within the provisions of the second section of the act of June 27th, 1890, as amended by the act of May 9th, 1900, who is or may become 62 years of age shall be pensioned under said acts at \$6 per

month, and every one who is or may become 65 years of age shall be pensioned at \$8 per month; those who are or may become 68 years of age shall be pensioned at \$10 per month, and those who are or who may become 70 years of age shall be pensioned at \$12 per month."

An attempted reply in part is that Judge Parker has announced that, if elected, he will recall the order and will favor the enactment of an old-age pension law, which will, it is claimed, make a drain upon the Treasury greater than that brought about by Mr. Roosevelt's act. But this is no reply. Judge Parker is advocating a law to be passed by Congress; he is not proposing to usurp the province of Congress. The people of the United States can afford to pay many millions of dollars annually to those who defended the Union. They can afford to pay no tribute to an unconstitutional act or to an exhibition of arbitrariness and a defiance of public opinion and of the legislative will. The President of the United States is expected to be the servant of the people,—not their master.

There may have been a great pressure upon the Administration to do what it did, and its enthusiasm, and not alone its political interests, may have run with the pressure, but we are not required to be content with an Administration which is "the slave of circumstance and impulse."

To the extent that rights may be said to have vested under such an order we must, under the familiar principle of law to which we have referred, see that, in setting the matter right, it be done without prejudice to those who might be embarrassed by the change. To that end a law substantially requisite to replace an unlawful order is defensible, even though the law involves the outgo of more money from the Treasury than would have been necessary but for the promulgation of the order.

Suppose, again, that the Republican Party should announce in its platform that it intended to secure the right to build the Panama Canal in the way in which that project has been begun. Then the question would be, not "What are you going to do about it, now that the act has been committed?" but "What will you do by way of conferring original authority for the act?"

It would then be set forth in the platform of the Republican Party, that its candidate for President of the United States, if elected, would seek to increase our commercial prosperity by promoting the building of the Panama Canal, if possible, by treaty

with Colombia; that, if he failed in this, he would refuse to obey the Spooner Act, which enjoined his then entering upon negotiations for the construction of the Nicaragua Canal; that if, in the course of the negotiations with Colombia, that part of Colombia within which is included the Panama route should revolt, he would forthwith recognize the insurgents as a Republic, and that, if Colombia should seek to repossess itself of the territory which had been thus torn from its rightful owner, the President of the United States, under the guise and pretence—for it is nothing else—of keeping a covenant of peace under a treaty to the rights of which Colombia had succeeded, would by threat and force of arms, and, by a bold usurpation of authority vested only in Congress, to all intents and purposes declare war upon Colombia and forbid that attempt; that the Republican Party would thereupon put a premium of \$10,000,000 upon rebellion, by a payment of that sum to a band of insurgents; and, lastly, and worst of all, that this course toward a weak sister nation would be defended, on the ground that such nation was obdurate and unreasonable, and that by any other course the construction of the inter-ocean waterway would have been long postponed.

Would the people then elect Mr. Roosevelt upon such an issue? Would they vote for that kind of a canal? Would they vote to have the Constitution overridden and war declared, not by Congress, but as completely by the caprice of a President as it is by that of any ruler on the Continent of Europe, hedged in by no constitutional restraint? This is no idle academic question before us. The gravity of the issue cannot be exaggerated. If the American People are not prepared to go so far as to say they would now confer original authority for such a defiance of the Constitution, then the candidate of the party responsible for this act is not entitled to be elected simply because the act cannot be wholly undone.

It is said that we did not promote the rebellion in Panama. The disclaimer of preliminary information on the subject by the Administration is confined to the statement by the President in his report to Congress, in January, 1904, that, save for certain official information and reports accompanying the message,

“no one connected with this Government had any previous knowledge of the revolution, except such as was accessible to any person of ordinary intelligence who read the newspapers and kept up a current acquaintance with public affairs.”

Now there is brought to light a letter, written on October 10, 1903, at the White House, to a friend, in which, among other things, Mr. Roosevelt said:

"I cast aside the proposition made at this time to foment the secession of Panama. Whatever other governments can do, the United States cannot go into the securing, by such underhand means, the cession."

Who made the proposition thus cast aside, and under what auspices was it made? What was the suggestion as to co-operation by us in promoting the secession of Panama, and what was to be the consideration to us? These are pertinent questions, and will, perhaps, have to be answered some day.

But the immediate questions are, why was there not laid before Congress all the information, or at least as much of it as was communicated to a friend, concerning this political intrigue, to which it now appears we were a proposed party? Who authorized the President of the United States, however much he may regard himself as the impersonation of the Government, to withhold information upon a subject concerning which he was presumably making a complete communication to Congress? On what theory did he regard himself as authorized to argue, and not in duty bound to state, the case just as it was?

Such a course may be justified elsewhere, but we are of the view that it will not be long tolerated in this country. Humiliating, indeed, must be the reading of these two statements, not alone to those who are friendly, but to those who are opposed to Mr. Roosevelt. The reading is alarming, too, as an indication of many things attempted to be pointed out in this article.

When some advocate shall make it appear that these two conflicting statements can be reconciled and that Mr. Roosevelt dealt in entire candor with Congress, he will earn the lasting gratitude of the American people. As the case now stands, however, it does not seem likely that any such fee can come out of this miserable mess.

There is an attempted defence of this Panama affair by Mr. Roosevelt and his supporters. That of Mr. Roosevelt is, perhaps, the best. He says in his letter of acceptance:

"Our opponents can criticise what we did in Panama only on condition of misstating what was done. The Administration behaved throughout not only with good faith, but with extraordinary patience and large generosity toward those with whom it dealt. It was also mindful of American interests. It acted in strict compliance with the

law passed by Congress. Had not Panama been promptly recognized, and the transit across the Isthmus kept open, in accordance with our treaty rights and obligations, there would have ensued endless guerilla warfare and possibly foreign complications; while all chance of building the canal would have been deferred, certainly for years, perhaps for a generation or more."

We are entitled to dismiss the statement that the Administration behaved throughout with extraordinary patience and large generosity toward those with whom it dealt, with the simple comment that the patience was of a wholly novel sort, true patience bearing to it about the same relation that sense bears to nonsense; and that the generosity seems to have been generosity only to stockholders in a canal company which was insolvent, and toward insurgents who were successful, if not through our alliance, at least by our connivance. That the Administration was not mindful of American interests is clear, for those interests could not best be subserved by the commission of a breach of national faith. Of course, it did not act in strict compliance with the law passed by Congress, because that law is mandatory in requiring the President to enter upon negotiations for the construction of the Nicaragua Canal if the Panama route could not be secured within a reasonable time—by treaty, be it remembered, and not by profit-sharing in a rebellion.

The fact that Mr. Roosevelt ignores this mandate and pleads that, by any course other than that adopted by him, the building of the canal would have been indefinitely deferred indicates the extremity to which he is obliged to resort in an attempt to justify his course.

The conjecture that guerilla warfare and possibly foreign complications would have ensued, but for the recognition of this one-day-old republic, is without justification. In fact, the more that light is let in upon this despicable affair—and light is being let in altogether too rapidly for the Republican peace of mind, one might conclude—the more the presumption grows into a conviction that Colombia, if not overawed by us, the Guarantor of her Sovereignty over Panama, would forthwith have suppressed that petty plot called, only by courtesy, a rebellion.

If we are going to conjecture as to what things might have happened if we had failed to act as we did, with how much more propriety may we not conjecture what another President may do, acting from purely evil motives—which we must all be prepared to

concede did not control Mr. Roosevelt—if this precedent be approved by a vote of the American people!

The fact is that the whole defence for Mr. Roosevelt of the Panama Canal episode falls to the ground. It is claimed by his supporters that, by our Treaty with New Granada, we were bound to do, or at least were justified in doing, what we did.

The claim cannot be sustained. The Treaty imposed reciprocal obligations upon the two contracting parties.

On the one hand, New Granada guaranteed to the United States the right to enjoy the ports of New Granada as they were enjoyed by her citizens; and, also,

“that right of way or transit across the Isthmus of Panama upon any modes of communication that now exist or that may hereafter be constructed, shall be open and free to the government and citizens of the United States; and for transportation of any articles of produce, manufacture or merchandise of lawful commerce belonging to the citizens of the United States, upon the same terms as to the citizens of New Granada.”

On the other hand,

“The United States guarantee positively and efficaciously to New Granada by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this Treaty exists; and in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.”

To the rights and obligations of New Granada, the United States of Colombia, and subsequently the Republic of Colombia, succeeded. The regularity of this succession and the sovereignty of the two republics were officially recognized by us in our diplomatic relations with them; two or more treaties were made and ratified between us and the United States of Colombia, and at least one was made and ratified between us and the Republic of Colombia, prior to the ill-fated Hay-Herran treaty. By a recognition of the new Republic of Panama and by forbidding the recovery by Colombia of the territory in revolt that we by treaty were bound to aid and not to obstruct, we prevented Colombia from fulfilling her guaranty to us. Then, by a claim that Colombia had not kept her part of the bargain, made impossible by our conduct, we repudiated our part of the treaty, which was to uphold the sovereignty of Colombia. We not only did all this, but,



by the precipitate recognition of the so-called Republic of Panama, we pursued a course which, if it had been adopted by foreign governments toward us in the time of the Civil War, might have made unsuccessful our effort to preserve the Union.

Mr. Root, in his defence of the Panama Canal incident, speaks of "the seizure by Panama of the opportunity to renew her oft-repeated effort to throw off the hateful and oppressive yoke of Colombia." But who set us up as judges to determine that the yoke of Colombia was hateful and oppressive? We recognized her sovereignty over Panama, and, however hateful and oppressive the yoke may have been, there can be no fair question that we should not have been guilty of a precipitate recognition of Panama but for the fact that we had in prospect the construction of the Canal. The question, however, cannot be discussed from any academic standpoint. We were under agreement not to do as we did, for the reason that we had undertaken by solemn treaty to guarantee the sovereignty of Colombia over Panama.

The following is the account of our stewardship as a Guarantor of Sovereignty. On the third of November, 1903, occurred the "uprising with no bloodshed" consisting of the arrest of two Colombian officers. Four days thereafter, we in the interval, and as matter of fact, before the uprising, having forbidden the movement of Colombian troops across the isthmus or any other hostile action by Colombia, three persons—"the dauntless Three" perhaps, who were about as much entitled to speak for a real republic as the three tailors of Tooley Street were entitled to petition Parliament as "We the people of England"—communicated by cable to the United States that the new Republic of Panama had been born. Recognition by us of the Republic took place on the day following, by this announcement, "The people of Panama, by an apparently unanimous movement, dissolved their political connection with the Republic of Colombia, and resumed their independence, and having adopted a Government of their own, republican in form, with which the Government of the United States has entered into relations, the President of the United States, in accordance with the ties of friendship which have so long and so happily existed between the respective nations, most earnestly commends to the Governments of Colombia and of Panama the peaceful and equitable settlement of all questions at issue between them. He holds that he is bound, not merely by

treaty obligations, but by the interests of civilization, to see that the peaceful traffic of the world across the Isthmus of Panama shall not longer be disturbed by a constant succession of unnecessary and wasteful civil wars."

The farce was thus complete.

"Do our opponents," flippantly asks Mr. Roosevelt in his letter of acceptance, "grudge the fifty millions paid for the Panama Canal?" No, perhaps not, but they do begrudge the stain which it has put upon our national honor, and they believe that in this they speak, not for the Democratic Party, but for the American People.

We are told by Mr. Hay, in his panegyric on Mr. Roosevelt, that "in times of doubt and difficulty the thought oftenest in his heart is 'What in such a case would Lincoln have done?'" The source of the trouble then must be that few cases of doubt and difficulty ever present themselves to Mr. Roosevelt when bent upon the accomplishment of his purpose, inasmuch as evidence of any such heart referendum is so rarely apparent in his political life.

Clearly, in the spoliation of Colombia there seems to have been no "doubt or difficulty"; nor, to complete the alliteration, was there any delay.

What a travesty it all is! To intimate even that Lincoln, with his infinite charity and forbearance, and with his deep religious devotion to principle and his subordination of self, would, under like conditions, not only without the authority, but against the mandate of a statute and of the Constitution, have done what Mr. Roosevelt did to Colombia, and in other ways would have made history as Mr. Roosevelt has made history, comes perilously near being a libel upon our martyred dead.

In a noted case before the Supreme Court of the United States, the question at issue was the right of maintenance of an action of ejectment against property held for the account of the United States. In the course of the argument, one of the Justices of the Court, in order to emphasize his intimation that such an action should not be maintained, asked of the counsel what his view would be where a plaintiff should be successful in a similar action instituted to recover Government land used for a lighthouse, which would thereby be dismantled.

The answer of the counsel was:

"Better that the lighthouse never should be lighted than that the Light of the Law should be extinguished."

On the eve of the great battle of Plassey, which was to determine the question of the possession of India by the English nation, Omichund, an ally, was about to play the British false. He was bribed by Lord Clive to remain true, and the understanding was to be set down in a treaty which Omichund supposed to have been signed by representatives of the English nation. The paper delivered to him was a substituted paper, and even that paper did not bear the signature it purported to bear. The biographer of Clive sought to defend it. Concerning the defence, Macaulay says:

"We should not think it necessary to offer any remarks for the purpose of directing the judgment of our readers with respect to this transaction, had not Sir John Malcolm undertaken to defend it in all its parts. He regrets, indeed, that it was necessary to employ means so liable to abuse as forgery; but he will not admit that any blame attaches to those who deceived the deceiver. He thinks that the English were not bound to keep faith with one who kept no faith with them, and that, if they had fulfilled their engagements with the wily Bengalee, so signal an example of successful treason would have produced a crowd of imitators. Now, we will not discuss this point on any rigid principles of morality. Indeed it is quite unnecessary to do so. For, looking at the question as a question of expediency in the lowest sense of the word, and using no arguments but such as Machiavelli might have employed in his conferences with Borgia, we are convinced that Clive was altogether in the wrong, and that he committed, not merely a crime, but a blunder. That honesty is the best policy is a maxim which we firmly believe to be generally correct, even with respect to the temporal interest of individuals; but with respect to societies, the rule is subject to still fewer exceptions, and that for this reason, that the life of societies is longer than the life of individuals. It is possible to mention men who have owed great worldly prosperity to breaches of private faith; but we doubt whether it be possible to mention a state which has, on the whole, been a gainer by a breach of public faith."

The Republic of Colombia had failed, it is asserted, to act in a spirit of fairness toward our Government. Though there is no complete proof of this, suppose it be conceded. Still, Colombia owed us no obligation to accept the treaty we proposed, fair though it may have been. Omichund, owing the English nation the obligations of an ally, was treacherous on the eve of battle; yet treachery to him has been condemned. If Macaulay be right—and who will have the hardihood to say that he is wrong?—how much less justification was there for our action toward Colombia, even

though that weaker nation was contumacious and was not acting as we thought would best enable us to promote the construction of a means of communication perhaps needed by us and by the whole world?

It is said by the Psalmist that he shall dwell in the tabernacle of the Lord and shall rest upon His holy hill and shall never fall, who among other things "hath not done evil to his neighbor, and hath not slandered his neighbor; and that sweareth unto his neighbor and disappointeth him not, though it were to his own hindrance." And whether we like to recognize it or not, we have come short of the standard of the Psalmist, for we profited by, even if we did not promote, a rebellion by which Colombia was stripped of her possessions; we set up an unworthy attack upon that nation as a justification and defence for the course we had pursued; and, more than all, we broke a solemn treaty obligation, for our commercial advantage.

To the extent that this wrong can be righted, reparation should, after full investigation, be made to the Republic of Colombia freely and promptly, if only for the reason, selfish though it be—though there are other reasons—that the act shall not serve as an accepted precedent, and that one stain upon the page of our history may be blotted out forever.

The danger in all such acts is not alone in themselves. Unless such an act be condemned, then, under the rule of law to which we have referred, it becomes a precedent for future misconduct, and whether it be right or wrong it may bind us as a people to the extent that rights have vested and rules of property and of conduct have become established under it; and it is to be remembered as a warning that it is rarely in great situations like these that such rights do not vest, and such rules do not become established.

Great danger, too, lurks in the condonation of such an act, for it is an accepted law of ethics that punishment in the Court of Conscience, unlike that in Courts of Law, lessens with each repeated and unrebuked offence; and it should be a matter of grave concern, that we do not deaden our sensibilities as a people to that which makes for righteous national conduct.

The whole Panama incident is defensible only as an act of expediency, and that defence is always demurrable when the charge is of a violation of the honor and the good faith of a State.

It is not a bright page in American history and never can be.

No doubt, it was desirable to secure an interocean waterway, but it would have been better that vessels should round the Cape until the end of time than that we, for any purpose, should have shortened the route by the practices with which we stand charged.

When Grover Cleveland, as Governor of the State of New York, was called upon to consider a bill passed by the Legislature reducing the fares on the Elevated Railroad, he vetoed a popular measure because his courage and adherence to principle, of which this action was but one of many manifestations, forbade him to accept expediency as his guide. He said:

"But we have specially in our keeping the honor and good faith of a great State, and we should see to it that no suspicion attaches, through any act of ours, to the fair fame of the commonwealth. The State should not only be strictly just but scrupulously fair, and in its relations to the citizens every legal and moral obligation should be recognized. . . .

"The experiences of other States teach us that we must keep within the limits of law and good faith, lest in the end we bring upon the very people whom we seek to benefit and protect a hardship which must surely follow when these limits are ignored."

As we have attempted to point out, the other acts of the Republican Party referred to, though differing in degree, are of common origin with those discussed, and are all manifestations of a determination on the part of the Republican Party to go forward with its purposes, if deemed expedient, regardless of means or of precedents laid down for our guidance, to be as mindful of the business of other people as we are of our own; to rule and not to serve the people.

It remains only to add this commentary as to the policy and conduct of that party.

The Democratic Party stands opposed to these acts. It insists that our national faith shall be kept at all times. It insists that the tariff shall be reconstructed so that injustice to the many shall not continue to be committed for the benefit of the few, and that an artificial income, abnormally large, shall not afford the basis or the incitement for profligate expenditures. It insists that we shall have a Government of peace as well as prosperity. It insists that, as we grow great and powerful, we shall be considerate to all nations. It insists that States are safe only so long as principles hold sway, even though conduct may at times fall short of the ideals which these principles enjoin; and it insists that we shall not, by our indifference, or by our approval of or acquiescence in

wrong acts, permit to be set up in this country false gods for worship.

If this be insincerity, then, clearly, insincerity is synonymous with love of country.

The Democratic Party insists that we have been burdened by the fortunes of war with the execution of a great trust in the Philippines, and not with the continued possession of a great territory—made possible only by a formidable navy, which it is now proposed to expand indefinitely—and it insists that to discharge that trust and hand back these lands to its inhabitants, free and independent, under conditions that will insure to us always a dominating moral and commercial influence there, involves no such nonsense as hauling down the flag of our country in dishonor; but it insists that, when that day of rejoicing shall have come to the Philippines, our flag for the first time will be raised there in triumph. It insists that for us, in the promotion of any world-wide scheme or policy, to hold possession of this territory for one moment beyond the time when its citizens are entitled to receive it, would be no more justifiable than would be the action of a trustee who might appropriate funds of which he was not the beneficiary, but the mere temporary custodian.

It insists that the duty of doing prompt and full justice to the people of the Philippines can be more safely entrusted to the Democratic Party, which regards our occupation of that territory as a misfortune, rather than to the Republican Party, which asserts that we are entitled to claim over it a rightful ownership.

Nor, in insisting that we shall thus limit our possession of territory, is the Democratic Party called upon to repudiate the doctrine of its founder, and to call in question the wisdom of the Louisiana Purchase; for Jefferson, in his correspondence with Madison, maintained that nothing should ever be accepted by us in the way of additional territory which would require a navy for its defence.

That the Democratic Party in all this is sincere, no one can doubt who hears a recitation of what it stands for, and what it stands opposed to, in this campaign. The kind of candidate it has selected is good evidence of its sincerity.

He stands for sound learning, and was a trained lawyer before he became the accomplished and honored presiding Judge of the Court of Appeals; he has lived true to the ideals and traditions of that court. He is a safe Judge and a safe man. There is no one

who has yet had the effrontery to say that anything but high motives have governed his judicial utterances. He stands as a man for all that makes manhood worth while, for a simple and rugged straightforwardness, for plain living and right thinking. He may not devote much time to exhibitions of the arts of rhetoric or to high-sounding phrases, but it may be that we have been fed in this country so much on highly seasoned, spectacular stuff, that we are no longer satisfied with the homely fare of simple, old-fashioned, forcible statement. If Judge Parker is not strenuous, he is at least of that dignity which will consort well with the administration of the high office for which he is a candidate; and if he does not go about armed to the teeth, we can yet claim that he is "rich in saving common sense."

Great problems are in process of being worked out in this country. At one extreme stands the Republican Party with its erroneous conception of government, that supreme power rests and is to be augmented in the National Government, asserting by its acts that the means are not to be so much regarded as the end; that power shall be exerted arbitrarily and without warrant of law or of the Constitution, provided only it work out to our commercial and financial benefit. Allied with the Republican Party, concededly, are vast, concentrated and powerful commercial and financial interests—not in themselves necessarily of injury to society, but believed by many to contain the source of great possible future peril.

At the other extreme are the dangerous forces which are bred and nourished in unrest and discontent, and whose emancipation from error only education, coupled with right example, can effect. If the record of the Republican Party for the past few years be now endorsed, and if the protest now urged against a course of political conduct which has been opposed to law and constitutional restraint be disregarded, will not an ominous object lesson have been presented to those representing this unrest and discontent, and may not they conclude that there is no good reason why they, too, should not seize the opportunity when it seems to them ripe and use any means which will accomplish what they regard as a justifiable end, though we know that end to be disaster?

We have boundless territory and great prosperity,—and national prosperity, it must be admitted, is essential to the accomplishment of the greatest good,—but to attain this prosperity we

cannot afford to see weakened the foundations upon which our security rests. Already on the subject of slavery this country has been torn asunder by a war in which great blood and treasure were poured out for the maintenance of the Union itself. That our country will survive in all its undiminished vigor, with increasing power for usefulness, should be the conviction of every citizen. But this conviction will become only a hope, and perhaps not even a reasonable hope at that, if we deliberately incur the new perils which a lack of reverence for the Constitution is bound to create.

If, however, on the other hand, when doubts arise as to our duty as a people, we have ever present in our thoughts the conditions under which republican government here was begun, and have regard for whatsoever things are elevated and uplifting, rejecting utterly as a people the doctrine that expediency furnishes a satisfactory rule for conduct; if we live true to the standards set up for our guidance by the founders of the Republic, and keep untiring watch over their legacy to us, permitting no man and no party, whether from good or from evil motives, to filch one farthing of that treasure from us, then this Government must go forward to fresh triumphs, not alone in material advancement, but in all that makes for true greatness and for lasting renown.

Emerson says, as he prophesies of the future of the Republic, "The spread eagle must fold his foolish wings, and be less of a peacock." And then he adds:

"In this country, with our practical understanding, there is, at present, a great sensualism, a headlong devotion to trade, to trade and to the conquest of continent—to each man as large a share of the same as he can carve for himself—an extravagant confidence in our talent and activity, which becomes, whilst successful, a scornful materialism, but with the fault, of course, that it has no depth, no reserved force to fall back upon when a reverse comes."

Matthew Arnold, too, has given us this out of the rich storehouse of his intelligence:

"And the philosophers and the prophets, whom I at any rate am disposed to believe, and who say that moral causes govern the standing and the falling of States, will tell us that the failure to mind whatsoever things are elevated must impair with an inexorable fatality the life of a nation, just as the failure to mind whatsoever things are just, or whatsoever things are pure, will impair it; and that if the failure to mind whatsoever things are elevated should be real in your American democracy, and should grow into a disease, and take firm hold on you,



then the life of even these great United States must inevitably suffer and be impaired more and more, until it perish."

Horace, in one of his great Odes, summed up, for us as well as for the Roman People, the philosophy of conduct for a nation, when he charged them with having left so long unvisited and neglected the altars of the gods:

*"Dis te minorem quod geris, imperas;  
Hinc omne principium, huc refer exitum."*

All this may be scoffed at as preaching the counsels of perfection; but, if space permitted, such preaching could be abundantly reinforced by many quotations not alone from the writings of other authors, but from the writings of Mr. Roosevelt himself, who in stirring, eloquent words has taught and advocated much which he has discarded in his public life.

And when such preaching and the practices it enjoins shall be departed from by those holding high places of political trust among us, and the departure be not condemned, and when this preaching and these practices shall cease to furnish us with our rule for national conduct, we shall show as little solicitude for the best interests of the Republic as we should for our personal safety, if, in embarking on a ship for a long voyage, we threw overboard chart and compass as we dropped the pilot.

JOSEPH S. AUERBACH.